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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,926	07/30/2003	Lothar Gluderer	WSO-41953	1921
24131	7590	06/23/2005	EXAMINER	
LERNER AND GREENBERG, PA P O BOX 2480 HOLLYWOOD, FL 33022-2480			GIBSON, ROY DEAN	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/629,926	GLUDERER, LOTHAR	
	Examiner	Art Unit	
	Roy D. Gibson	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-3, 5-16, 19, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) 4, 17, 18, 20, 23 and 24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Entry of Amendment

Applicant's amendment filed on April 13, 2005 is acknowledged. Claims 1-24 are currently pending.

Prior Rejections or Objections

The following comments pertain to the rejections or objections in the most recent Office action, mailed on Jan. 13, 2005. Rejections under 35 U.S.C. 102 and 103 are withdrawn, however, new grounds of rejection are presented below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-16, 19 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeVilbiss et al. (5,989,285) in view of Kushnir et al. (6,685,731).

As to claims 1 and 2, DeVilbiss et al. disclose a device for releasing warm or cool air to a patient's body and additionally providing heat or cold to the body via enclosed and circulating water comprising:

an applicator (10) having at least two layers defining a space therebetween (Figures 3-5, top layer 12 and bottom layer 28 defining chambers 38 and 46);

a control device (18) connected to the device (Figure 8) for controlling the temperature of the gas (air) and liquid (water) via sensors in the heating/cooling apparatus (12); and controlling flow rate and pressure via the design parameters of the pumps (126 and 130 and col. 3, line 50-col. 6, line 57). But, DeVilbiss et al. fail to specifically disclose a biosensor (temperature sensor) on or within the patient's body as a feedback signal to the control device. But, Kushnir et al. disclose a garment for controlling the temperature of a patient, wherein both the temperature of the circulating heating/cooling fluid and the body (skin or core temperature) are measured and their signals used in a feedback mode to control the temperature of the heating/cooling medium (col. 6, lines 47-62 and col. 10, lines 29-67). Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the device of DeVilbiss et al., as taught by Kushnir et al., to also place a temperature sensor on the skin or within the body to serve as a feedback signal for more accurate temperature control of air or liquid which is heating or cooling the patient.

Further to claim 3, DeVilbiss et al. fail to disclose an EKG output is monitored as a body parameter. However, the examiner maintains that such a monitoring is typically provided as important information to an operator or medical personnel during the procedure with the device. Therefore, the time of the invention it would have been obvious to one of ordinary skill in the art to modify the device of DeVilbiss et al. to include EKG monitoring.

Further to claims 5-16, DeVilbiss et al. disclose the chambers are disposed in vicinity below one another (Figure 3); wherein at least one layer of the applicator (28) is

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permeable by being formed with openings (54); wherein at least one layer is configured to face the body (layer 28); wherein at least one layer of the applicator (28) is impermeable (layer 12) to the fluidic medium therein; and wherein at least one layer (12) is averted from the body (col. 3, line 50-col. 6, line 57).

Further to claims 19, 21 and 22, DeVilbiss et al. disclose the chambers are subdivided into additional mutually communicating subchambers (Figure 2); wherein the layers are produced from flexible material such as polyvinylchloride (col. 4, lines 3-5).

Allowable Subject Matter

Claims 4, 17, 18, 20, 23 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bell et al. (5,411,541) disclose a portable fluid therapy device with chambers above each other, one with a gas and the other with a liquid; and Arkans (4,38,944) discloses a therapeutic device with chambers above each other, one with a gas and the other with a liquid.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on M-F, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Roy D. Gibson
Primary Examiner
Art Unit 3739

June 20, 2005